

STATE OF WISCONSIN
Department of Justice

STATEMENT OF SCOPE OF PROPOSED EMERGENCY RULE

Rule No.: The proposed emergency rule will amend Jus 17.03(8).

Relating to: Licenses authorizing persons to carry concealed weapons.

1. Description of the objectives of the rules:

The State of Wisconsin Department of Justice (“DOJ”) proposes to promulgate an emergency administrative rule relating to the issuance of licenses authorizing persons to carry concealed weapons under s. 175.60, Stats.

The proposed emergency rule will amend Wis. Admin. Code s. Jus 17.03 (8) to repeal the requirement that a “firearms safety or training course,” as defined and used in Wis. Admin. Code ch. Jus 17, must have a student-teacher ratio less than or equal to 50:1. The proposed emergency rule will be followed by a proposed permanent rule, also repealing the 50:1 requirement.

The legality of the 50:1 requirement is being challenged in pending litigation. In the course of that litigation, DOJ has determined that the 50:1 requirement is not enforceable under existing law, that it will immediately cease enforcement of that requirement, and that the requirement should be repealed. The public welfare thus necessitates immediate repeal of the 50:1 requirement by emergency rule in order to make it clear to the public that the requirement is no longer being enforced and to promptly resolve the pending litigation with the least burden and inconvenience to the Court and the parties and with the least litigation expense to the people of the State of Wisconsin.

2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background and justification for the proposed rule:

Under existing law, a qualified Wisconsin resident may obtain from DOJ a license (“CCW license”) that permits the licensee to carry a concealed weapon anywhere in this state except as specifically prohibited by statute. *See* s. 175.60 (2g) (a), Stats. The eligibility requirements for a CCW license include a requirement that the applicant provide proof of firearms training or equivalent firearms experience in any of a number of statutorily enumerated forms. *See* s. 175.60 (3) (g), (4) (a), and (7) (e), Stats. Several of the enumerated categories use the phrase “firearms safety or training course.” *See* s. 175.60 (4) (a) 1. b. to e., Stats. The statute does not, however, define the meaning of that phrase.

On May 31, 2013, DOJ promulgated permanent administrative rules relating to CCW licenses. Those rules include a definition of “firearms safety or training course” which provides, in pertinent part, that such a course must be “instructor-led.” Jus 17.03 (7). The rules also include a definition of the term “instructor-led” which provides, in pertinent part, that an instructor-led course must have “an instructor-

student ratio that does not exceed 50 students per instructor.” Jus 17.03 (8). Read together, those definitions require that a “firearms safety or training course” for CCW licensing purposes under s. 175.60 (4) (a) 1. b. to e., Stats., must have a student-teacher ratio less than or equal to 50:1.

Under s. 227.10 (2m), Stats., “[n]o agency may implement or enforce any standard, requirement, or threshold, including as a term or condition of any license issued by the agency, unless that standard, requirement, or threshold is explicitly required or explicitly permitted by statute or by a rule that has been promulgated in accordance with [subchapter II of ch. 227, Stats.]” Under s. 227.11 (2) (a) 3., Stats., “[a] statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.” In addition, s. 175.60 (2) (b), Stats., expressly prohibits DOJ from imposing conditions, limitations, or requirements on the issuance of a CCW license that are not specifically provided for in s. 175.60, Stats.

DOJ has concluded that the statutory provisions described in the preceding paragraph render unenforceable the 50:1 student-teacher ratio requirement in s. Jus 17.03 (8). In accordance with that conclusion, DOJ has ceased enforcing the 50:1 requirement. The rule proposed here will remove the 50:1 requirement from s. Jus 17.03 (8) and will thereby carry into effect the legislative policies contained in the above-referenced statutory provisions. The alternative of not removing the 50:1 requirement from s. Jus 17.03(8) would be contrary to those legislative policies and would leave in the Administrative Code a requirement that DOJ is no longer enforcing.

3. Statutory authority for the rule (including the statutory citation and language):

The proposed rule is authorized by s. 227.11 (2) (a), Stats., which confers on each administrative agency the power to promulgate administrative rules that the agency determines to be necessary to effectuate the statutory provisions administered by the agency, as long as those rules do not exceed the bounds of correct interpretation of those provisions.

The rule proposed here is necessary to effectuate those portions of s. 175.60, Stats., that require DOJ to establish and operate procedures governing the issuance of concealed carry licenses to qualified applicants, including verification that each applicant has satisfied the applicable statutory training requirements, has passed the mandatory background check, and has met all of the other statutory eligibility requirements for a license.

4. Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:

It is estimated that state employees will spend approximately 8 hours on the rulemaking process for the emergency rule proposed here, primarily for compliance with required rulemaking procedures.

5. Description of all entities that may be impacted by the rule:

The proposed rule will affect the interests of all Wisconsin residents who wish to apply for a CCW license and of those persons and organizations conducting a “firearms safety or training course” for CCW licensing purposes.

6. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule:

For persons other than current and former law enforcement officers, the regulation of the carrying of concealed weapons is primarily governed at the state level. Numerous federal statutes and regulations restrict the possession of weapons that have been shipped in interstate commerce, but there are no federal regulations that relate to training for state CCW licensing.

7. Anticipated economic impact of proposed rules.

The proposed rule removes a restriction on the size of a “firearms safety or training course” for CCW licensing purposes, which may have a small beneficial economic impact on persons and organizations conducting such courses. The proposed rule is expected to have no negative economic impact on any non-governmental persons or entities and no economic impact on local units of government.

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